

IC 5-16-5

Chapter 5. Withholding and Bond to Secure Payment of Subcontractors, Labor, and Materialmen

IC 5-16-5-1

Withholding final payments; filing claims for payment; release of surety; definitions

Sec. 1. Except as hereinafter otherwise provided, when any public building or other public work or public improvement of any character whatsoever is being constructed, erected, altered or repaired under contract at the expense of the state or a commission created by law, it shall be the duty of any such board, commission, trustee, officer or agent acting on behalf of the state or commission created by law, to withhold final payment to the contractor until such contractor has paid to the subcontractor or subcontractors, materialmen for material furnished, labor employed in such construction or those furnishing any service in relation to or in connection with such construction, erection, alteration or repair, all bills due and owing the same; Provided, That there is a sufficient sum owing to the contractor to pay all such bills, and if there is not a sufficient sum owing to such contractor on such contract to pay all such bills, then the sum owing on such contract shall be prorated in payment of all such bills among the parties entitled thereto; Provided, That such subcontractor or subcontractors, materialmen, laborers or those furnishing service as herein provided shall file with any such board, commission, trustee, officer, or agent acting on behalf of such state or commission created by law, their claim within sixty (60) days from the last labor performed, last material furnished, or last service rendered by them, as provided in section 2 of this chapter. Where no dispute shall arise between any parties interested in such funds so withheld, the board, commission, trustee, officer or agent acting on behalf of said state or commission created by law, shall pay said claim or claims out of the funds due such contractor and take receipt therefor, which sum or sums shall be deducted from the contract price. Where there is a dispute between any of the parties claiming to be entitled to such funds so withheld, or any part thereof, sufficient funds shall be retained by such board, commission, trustee, officer or agent acting on behalf of said state or commission created by law until such dispute is settled and the correct amount is determined, when payment shall be made as aforesaid; Provided, however, That nothing in this chapter contained shall prevent or preclude a full, final, and complete settlement upon a contract with the contractor or contractors after thirty (30) days from the date of the completion and acceptance of the work as completed upon the furnishing of satisfactory evidence showing the payment in full of all subcontractors, materialmen, laborers or those furnishing services in the performance of said contract; Provided, further, That the surety of said contractor or contractors shall not be released until the expiration of one (1) year after the final settlement with said contractor or contractors. The terms "public building," "public work"

and "public improvement," or combinations thereof, as used in this chapter, shall be construed to include all buildings, work or improvements the cost of which is paid for by funds derived from taxation.

(Formerly: Acts 1911, c.173, s.1; Acts 1925, c.44, s.1; Acts 1931, c.168, s.1; Acts 1933, c.258, s.1.) As amended by Acts 1981, P.L.57, SEC.10.

IC 5-16-5-2

Contract provisions for payments; deposit of bonds; filing verified statements of amount due; suit against sureties

Sec. 2. (a) In all contracts awarded contractors for the construction, erection, alteration, or repair of a public building or other public work or improvement as provided in section 1 of this chapter, the contract must provide for the payment of subcontractors, labor, materialmen, and those performing service in connection with the construction, erection, alteration, or repair. The contract must provide for the payment of subcontractors by withholding by the board, commission, trustee, officer, or agent acting on behalf of the state or commission, funds sufficient from the contract price to pay the subcontractor, labor, materialmen, and those furnishing service in relation to or in connection with construction, erection, alteration, or repair. A bond shall be executed by the contractor to the state, approved by the board, commission, trustee, officer, or agent acting on behalf of the state or commission, in an amount equal to the total contract price. The bond shall be conditioned for payment by the contractor, the contractor's successors and assigns, and by the subcontractors, their successors and assigns, of all indebtedness, which may accrue to any person, firm, limited liability company, or corporation on account of any labor or service performed, materials furnished, or service rendered in the construction, erection, alteration, or repair of a building, work, or improvement, including all road, highway, street, alley, bridge, sewer, drain, or other public improvement. The bond by its terms shall be conditioned to directly inure to the benefit of subcontractors, laborers, materialmen, and those performing service who have furnished or supplied labor, material, or service for the construction of any public work or improvement.

(b) The bond required under subsection (a) shall be deposited with the board, commission, trustee, officer, or agent acting on behalf of the state or commission for the benefit of a person, firm, limited liability company, or corporation interested in and entitled to the bond. The bond shall be conditioned that:

- (1) a change, modification, omission, or addition in and to the terms or conditions of the contract, plans, specifications, drawings, or profile; or
- (2) any irregularity or defect in the contract or in the proceedings preliminary to the letting and awarding of the contract;

shall not affect or operate to release or discharge the surety.

(c) The provisions of this chapter shall become a part of the terms of a contract awarded under this chapter. A bond for a public work or improvement is subject to the provisions of this chapter.

(d) A person, firm, limited liability company, or corporation to whom money is due on account of having performed labor or having furnished material or service in the construction, erection, alteration, or repair of a building, work, or improvement under this chapter shall, within sixty (60) days after the completion of the labor or service or within sixty (60) days after the last item of material has been furnished, file with the board, commission, trustee, officer, clerk, or agent of the state or commission that entered into contract with the principal contractor for the public work or improvement duplicate verified statements of the amount due to the subcontractor. The board, commission, trustee, officer, authorized clerk, or agent of the state shall deliver to the surety or sureties on the bond one (1) of the duplicate statements. The failure to deliver a duplicate statement by a board, commission, trustee, officer, authorized clerk, or agent of the state does not affect or invalidate the rights of the person, firm, limited liability company, or corporation to whom money is due on account of having performed labor or service or having furnished material, nor does the failure to deliver a duplicate statement operate as a defense for the surety.

(e) No suit shall be brought against a surety or sureties on a bond under this section until the expiration of thirty (30) days after the filing of the verified duplicate statement. If the indebtedness is not paid in full at the expiration of thirty (30) days, the person, firm, limited liability company, or corporation may bring an action in a court of competent jurisdiction upon the bond. The action must be commenced within sixty (60) days from the date of the final completion and acceptance of the public building or public work, and unless commenced within sixty (60) days, action on the bond against the surety or sureties is barred.

(f) On state highway road and bridge contracts the provisions of the Indiana department of transportation law (IC 8-23-9) with respect to the bond shall govern.

(Formerly: Acts 1911, c.173, s.2; Acts 1925, c.44, s.2; Acts 1931, c.168, s.2; Acts 1933, c.258, s.2.) As amended by Acts 1980, P.L.74, SEC.11; Acts 1981, P.L.57, SEC.11; P.L.18-1990, SEC.13; P.L.8-1993, SEC.63.

IC 5-16-5-3

Conflicting laws

Sec. 3. This chapter shall not be construed as conflicting with any other laws for the protection of labor, subcontractors, or materialmen, but is supplemental to those laws.

(Formerly: Acts 1911, c.173, s.3.) As amended by P.L.25-1986, SEC.90.